82-1884

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

A. JUAN JORGE MORALES,

Petitioner,

-against-

NEW YORK UNIVERSITY, PERRY L. NORTON and DICK NETZER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

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QUESTIONS PRESENTED

I. Did the University violate Petitioner's right to due process of law under the Fifth and Fourteenth Amendments of the Constitution of the United States when it failed to provide either procedures or qualified personnel to evaluate his academic credits earned at a foreign institution of higher learning after it had assured him that the University recognized foreign credits; and when it failed to provide a mechanism within the university system to review the denial.

II. Did Petitioner rely to his detriment upon the Univesrsity's assurances concerning his 40 transfer credits?

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The opinion and order of the New York State Supreme Court, New York County, entered July 23, 1982 is not reported. It is attached as Appendix A. The opinions of the Appellate Division, First Department, entered on or about December 16, 1982, and of the New York State Court of Appeals entered on February 23, 1983 are not yet officially reported. They are attached as Appendices B and C respectively.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3)

> FINAL JUDGMENTS OR DECREES RENDERED BY THE HIGHEST COURT OF A STATE IN WHICH A DECISION COULD BE HAD, MAY BE REVIEWED BY THE SUPREME COURT AS FOLLOWS:
>
> * * *
>
> (3) BY WRIT OF CERTIORARI, . . . WHERE ANY TITLE, RIGHT, PRIVILEGE OR IMMUNITY SPECIALLY SET UP OR CLAIMED UNDER THE CONSTITUTION, TREATIES OR STATUTES OF, OR COMMISSION HELD OR AUTHORITY EXERCISED UNDER, THE UNITED STATES.

The order of the New York State Court of Appeals is dated February 23, 1983.

CONSTITUTIONAL PROVISION INVOLVED

Two constitutional provisions are involved in this case. First, the Fifth Amendment to the United States Constitution, which provides in pertinent part as follows:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation";

Second, § 1 of the Fourteenth Amendment to the United States Constitution, which provides in pertinent part as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privilges or immunities . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Until March 1983 Petitioner, Mr. A. Juan Jorge Morales, was an international civil servant in the employ of the United Nations in a supervisory professional post. At the time of trial he was Chief of the Technical Assistance Recruitment Service at U N Headquarters in New York. Desiring to remain gainfully employed beyond the U N mandatory retirement age (60) he began at age 55 to investigate how he could most effectively secure employment as a writer, teacher and lecturer upon his U N retirement, when he reached age 60 on February 8, 1983. He decided that an American Ph.D. degree would be extremely valuable in pursuing his next career of teaching, writing and lecturing.

Mr. Morales is a native of Argentina and recently became a permanent resident of the United States. He is an Honor Graduate of Argentina's Military College of the Nation,

which is the equivalent of the United States Military Academy at West Point. He later graduated from Argentina's Superior War College, which is the equivalent of the United States Army Command and General Staff College at Fort Leavenworth, Kansas. The U.S. Army Command and General Staff College grants a Master's degree recognized by most American universities. Petitioner graduated from Argentina's War College as a General Staff Officer. He served in the Argentine Army for fifteen years and attained the rank of Lieutenant Colonel. He also served as full Professor of Strategy and Tactics of the War College before requesting an early retirement from the Army to assume his post at the United Nations.*

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* From 1963 to 1967, Mr. Morales held a professional post, Official Translator (French, Spanish and English), at U N Headquarters in New York. In 1967, he was transferred to the Technical Assistance Recruitment Service, received promotions periodically and ultimately was appointed Chief of that Service.

Early in 1976, having decided that obtaining an American Ph.D. degree would be the best way of meeting his goal after mandatory retirement from the U N, Petitioner began to evaluate several universities, among them Columbia and New York University, to determine which would be best for him to attend. A decisive factor in his evaluation was whether the institution to which he would apply for graduate studies leading to an advanced degree would recognize credits earned by Petitioner at the institutions of higher learning he had attended in his birthplace, Argentina.

In that same year, Petitioner met with Dr. S. Mailick in his office at New York University where he is a tenured professor in the Graduate School of Public Administration. Petitioner was informed by him that in 1973 Dr. Mailick had also held the position of Director of Doctoral Studies for this graduate school. During detailed discussions with Dr.

Mailick Petitioner was informed that in certain circumstances New York University did recognize credits from foreign schools, that it would recognize Petitioner's credits for advanced standing and that Petitioner would be able to obtain his Ph.D. degree in Public Administration in not more than two-and-one-half years to three years attending night classes as a part-time student at the University. Additionally, Dr. Mailick expressed his readiness to have Petitioner replace him as professor in his classes at the University during his own scheduled absences to conduct courses abroad, once Petitioner had obtained his Ph.D.

Petitioner then read current University literature which confirmed the assertions of Dr. Mailick that the University recognized credits from foreign schools, but nowhere were any standards set forth which explained how and why the University could decide to accept certain credits and reject others.

Nevertheless, Petitioner chose to apply to the University as a part-time student, and provided all required transcripts and certified translations thereof to Mrs. Virginia N. Fisher, who had been designated to Petitioner as the University's official in charge of evaluating foreign credentials. Mrs. Fisher reviewed all of Petitioner's transcripts and diplomas and after a consideration of all the many documents she conducted a 90-minute interview with him. At the close of the interview she told him that his academic level was at least that of a Master's, and assured him that she could foresee no reason why 40 transfer credits should not be awarded him. She stated that she personally would recommend to the University that Admission be offered to him and that such credits be accepted. However, she stated that it was the policy of the University to award transfer credits for avanced standing

only after enrollment and within the first six months of attendance.

Petitioner accepted the University's offer to enroll as Ph.D. candidate in the Graduate School of Arts and Sciences, Department of Public Administration. After six months of paying for, studying and being examined in prescribed courses which he passed with high marks, Petitioner attempted to obtain the recording to his student file of his transfer credits by writing several letters to the appropriate Deans of the University.

The University Bulletins stipulate that an estimate of transfer credits is to be made during the student's first Doctoral Advisement session, and that the award of transfer credits is to be effected within the first six months of the student's attendance at the University. Despite Petitioner's repeated oral and written attempts for two years, he was unable to secure any such decision from the University. Finally,

two years after having matriculated at the University Petitioner's academic credentials were examined by Dr. C. Mitchell, Director of the University's Center for Latin-American and Caribbean Studies and Professor of Political Science in the Graduate School of Arts and Science, the School in which Petitioner was enrolled. Dr. Mitchell, the University's acknowledged expert in Latin American Studies, also conferred with Mrs. Fisher and then confirmed in a letter to the Dean and Director of Doctoral Studies that Petitioner's academic studies in Argentina clearly entitled him to the 40 transfer credits sought. Based upon Dr. Mitchell's letter, Respondent Dean Norton, Director of Doctoral Studies, wrote to Petitioner confirming the award of the 40 transfer credits. However, Petitioner received no word from the Recording Office that the award had been noted in his file. Petitioner

then wrote once more to Respondent Dean Norton and received a second letter from him reiterating the official award of 40 transfer credits. When Petitioner attempted to verify with the Recording Office whether the credits had in fact been recorded in his student file, he discovered that the credits had not been so recorded. His discovery angered University officials and still another evaluation of Petitioner's credentials was ordered, this time to be undertaken by Ms. Nancy Eder, appointed to replace Mrs. Fisher. Ms. Eder's training consisted of several hours of informal discussions with Mrs. Fisher.

Ms. Eder, without benefit of Petitioner's diplomas and with only a page or two of his transcript, determined that Petitioner was not entitled to any transfer credits from his Argentine schooling. This new determintion came after two-and-a-half years of Petitioner's enrollment, after he had spent two-and-a-half

years completing graduate studies at the University, and forclosed attainment of his goal to receive his doctorate before mandatory retirement from the United Nations, where he had continued to work full-time while attending the University's evening classes.

Finally, Dean R. Raymo of the Graduate School of Arts and Sciences, in a move characterized by all other involved University officials as unusual, suddenly refused to grant Petitioner any transfer credits at all. Dean Raymo based his decision upon the third evaluation of Petitioner's credentials, by Ms. Eder, the newly appointed and inexperienced Foreign Credentials Evaluator.

Having been denied any transfer credits and faced with no recourse within the University the Petitioner instituted this lawsuit in order to secure both reinstatement of his officially awarded transfer credits and damages.

When this litigation was begun, in March 1979, Petitioner was prepared to sit for his Doctoral Comprehensive Examinations, but the University barred him from doing so. Petitioner then requested a leave of absence to maintain his standing at the University. This was granted by the University, however, Petitioner was barred from consulting with any faculty members, use of any libraries or research facilities of the University. Petitioner's study progress has, therefore, been paralyzed.

REASONS FOR GRANTING THE WRIT

I. The University violated Petitioner's right to due process of law under the Fifth and Fourteenth Amendments to the Constitution of the United States when it failed to provide either procedures or qualified personnel to evaluate his credits after it had assured him that the University recognized foreign credits and when it failed to provide a mechanism within the University system to review the decision.

A. The University violated Petitioner's right to due process of law.

Petitioner is a native of Argentina who enrolled as a Ph.D. candidate in an American University, New York University (the "University"), for graduate education and sought transfer credits for his Argentine academic studies. In reviewing this request by Petitioner for transfer credits, the University acted arbitrarily

and in violation of Petitioner's right to due process in that it did not provide any standards for the review of foreign transfer credits; it did not specify any procedure for the review of transfer credits; it did not provide an experienced and knowledgeable person to review foreign transfer credits; it did not endeavor to gather information about Argentina's eductional system in order to make a credible decision concerning the transfer credits; and it rejected the evaluation of an experienced foreign credentials evaluator and of an expert in Latin American Studies in favor of an inadequate evaluation by a novice evaluator. In addition, the University violated the Petititioner's right to due process by failing to provide any mechanism for review of this decision within the University. Moreover, the University failed to follow its own published procedures as listed in its public catalogs concerning the time limit within

which estimation of transfer credits would be given as well as for the formal award of them. Thus, this case involves a clear violation of Petitioner's right to due process in the educational setting.

The case at bar presents novel issues which, to the knowledge of Petitioner have never been brought to this Court and concern the status of private universities and public policy implications, which make this case appropriate for review by this Court.

This Court has previously established that there is a fundamental right to an eduction, which is akin to a property right, and which cannot be denied without due process. Goss v. Lopez, 419 U.S. 565 (1975). However, although there has been a greal deal of litigation in the lower courts regarding private institutions of higher education,

this Court has never ruled whether such institutions are extensions of the state or federal government for limited purposes and thus subject to the requirements of due process. See, e.g., Braden v. University of Pittsburgh, 552 F. 2nd 948 (3rd Cir. 1977); Williams v. Howard University, 528 F. 2d 658 (D.C. Cir., 1976); Greenya v. George Washington University, 512 F. 2d 556 (D.C. Cir. 1975). Belk v. Chancellor of Washington University, 336 F. Supp. 45 (E.D.N.Y., 1970); Guillory v. Administrator of Tulane University, 203 F. Supp. 855 (*E.D. La. 1962). Private institutions are funded by the federal and state governments for grant programs, research programs, and athletic programs. These funds comprise a major portion of the budget of those universities. In addition, the universities are subject to extensive federal and state regulations which reach every aspect of university life and

policy. Because of the intermingling of public and private funds, and of public and private rules and regulations, these universities must be considered an extension of the state and federal governments. They must at least be controlled by such governments, to protect the due process rights of the students attending the institution.

Although many of the courts below have ruled that private universities are not extensions of the state, other courts have held private universities subject to requirements of due process. In Belk v. Chancellor of Washington University, supra, students sued for a deprivation of the right to an education because the school's chancellor did not prevent the repeated disruption of classes. The court found that the University, in exercising its educational function, was an extension of the state and, thus, subject to the requirements

of the Fourteenth Amendment. In dealing with matters relating to Petitioner's education, the University should be subject to the same requirements. See also Branden v. University of Pittsburgh, supra; Guillory v. Administrator of Tulane University, supra. As there have been contradictory rulings on this same issue among the circuits, this Court should review this case and settle the dispute. Supreme Court Rules, Rule 17(a); Donaldson v. U.S., 400 U.S. 517 (1971).

The issues involved in this litigation are especially important because Petitioner is a Ph.D. candiate seeking transfer credits for academic studies performed at foreign institutions of higher learning. In Howard University v. National Collegiate Athletic Association, 367 F. Supp. 926 (DDC 1973), aff'd 516 F. 2d 213 (D.C. Cir. 1975), the District and Circuit Courts reviewed a ruling

of the N.C.A.A. which affected the right of foreign students to participate in inter-collegiate sports. The particupation of foreign students was held to be a significant factor in finding the N.C.A.A. to be subject to due process strictures.

B. Academic freedom does not prevent the University from establishing and following its own standards; neither does academic freedom prevent the courts from reviewing and enforcing standards and procedures established by the University.

Although this case bears upon the academic decisions of New York University, it does not implicate the question of academic freedom, and is therefore, appropriate for court review. Although a university or an institution of higher learning must remain free of a court's interference in setting academic standards, that does not mean that all of its decisions are completely immune from review.

The first factual issue in this case is precisely the failure of the University to set standards for the evaluation of foreign credentials for transfer credits. The University or any university is free to refuse transfer credits from foreign institutions and the University could doubtless present several valid reasons for such refusal. However, the University determined that it would consider credits obtained at foreign schools. This determination was communicated both orally and in writing to Petitioner both before and after enrollment. Nowhere, to the knowledge of Petitioner, are the University's standards for evaluating foreign credits set forth. Petitioner was never apprised of the guidelines according to which Mrs. Fisher, the first Foreign Credentials Evaluator decided to recommend that 40 transfer credits be recognized for advanced standing. Therefore,

Petitioner was powerless to argue when Ms. Eder, the novice evaluator and successor to Mrs. Fisher two-and-a-half years later, re-evaluated Petitioner's credentials and reversed the conclusions of Mrs. Fisher and Dr. Mitchell.

The University does have academic freedom, but such freedom cannot be extended to deny students their educational rights. By refusing to establish standards, the University is in effect putting the student in a powerless position. On a whim, the University can allow one student transfer credits while forbidding them to another. Even if it were said that a student and a university had not entered into a contract with each other, both the University and the student have obligations and rights toward one another. If a student pays his tuition and meets all of the school's requirements for the degree, the school cannot arbitrarily deny the student his degree. The

school, moreover, cannot make its requirements so vague as to prevent effectively the student from ever knowing whether he was meeting a requirement. This is precisely the case here. Petitioner could never discover why the credits from Argentina would or would not be accepted, and yet surely the University must have based its two successive and contradictory decisions on reasons. Petitioner contends, however, that the University's reasons were in fact only the whim of Mrs. Fisher and then Ms. Eder. In two and one-half years Petitioner completed thirty-six credits at the University working full days and attending night classes. With the rejection of the 40 transfer credits he would be forced to accrue another thirty-six credits at the University, spend more years, effort, money and sacrifice of family life than he had anticipated in order to obtain his doctorate. To qualify for the doctorate,

72 credits were needed in addition to a dissertation. Petitioner had completed thirty-six credits at the University. Having to complete another thirty-six credits meant doing double the coursework he had been led to believe would be required of him.

The court below erred in two major respects: first, the courts confused the need for academic freedom with the necessity for universities to establish standards and provide competent personnel to evaluate foreign transfer credits. The absence of such standards and personnel in the case at bar has resulted in depriving Petitioner of his property interest in his education. Second, the courts erred in holding that Petitioner did not rely to his detriment upon the University's assertion that he would be entitled to 40 transfer credits.

The public policy aspects of this case are not to be disregarded. Universities advertise extensively to enroll students many of whom are foreign. These students are promised, as was Petitioner, that some of their credits will be recognized. They enter the university, pay their tuition, study, upset and rearrange their lives and those of their families and co-workers, only to discover that the University grants transfer credits in a purely haphazard manner. If a major university such as New York University is not equipped with the means for a proper evaluation of foreign credits, the University should stay well out of the business of evaluating and recognizing foreign studies. If a university desires that its academic decision-making remain unrestricted and free from court interference, the school must first be responsible and trustworthy towards it students.

It cannot tell a student that it is ready to consider and grant foreign transfer credits while it lacks both standards and experienced, knowledgeable personnel to effectuate creditable evaluations. Ms. Eder's rise to Foreign Credentials Evaluator in this case is nothing if not disgraceful. A few hours of informal dicussion with her predecessor, Mrs. Fisher, could not under any interpretation have qualified Ms. Eder to review Petitioner's Argentine academic studies. Such a procedure is unworthy of an institution such as New York University and reveals its contempt for foreign schools and foreigners, or at the very least, for Argentine institutions of higher learning. Knowledge of and respect for those schools meriting such respect are the least that a university of the status of New York University must demonstrate, particularly when it advertises itself as an

international and cosmopolitan institution.

Not only are standards and personnel indispensable in the evaluation of foreign credits, but students' rights must be respected by the University. Petitioner had the right to determine the status of his transfer credits. After delaying certification in violation of its own Bulletins the University in effect punished Petitioner for his inquiries by ordering re-evaluations of his credentials. This Court has recognized students' rights in many instances. At the very least Petitioner and any student must remain free to verify the status of his studies and transcript records without being penalized. Indeed, the record in this case demonstrates that New York University rebuked Petitioner for asserting his rights. The University officials became incensed when Petitioner pointed out their own errors. If a school establishes

standards which it can enforce against students, academic freedom does not prevent students from holding the University bound by those same standards. Indeed, academic freedom demands that students be able to enforce their rights against the University. In short, the University cannot hide behind academic freedom to become a demagogue.

II. Petitioner relied to his detriment upon the University's assurances concerning his 40 transfer credits.

Moreover, the courts below erred in failing to find detrimental reliance by Petitioner upon the actions of the University. Petitioner was 55 years old when he accepted the University's offer to enroll as a Ph.D. candiate. He needed a total of seventy-two credits to obtain his doctorate. If his 40 transfer credits were recognized for his academic studies in Argentina, these

credits coupled with the thirty-six credits he accrued with his studies at the University would enable him to reach his goal of obtaining his Ph.D. by the time of his mandatory retirement from the U N. His time, effort and financial expenditures would have been spent as he had carefully planned before enrollment at the University. He was assured by Dr. Mailick, Mrs. Fisher and by Respondent Dean Norton orally and in two successive official letters that 40 transfer credits were accepted by New York University. Had the University told Petitioner either that it would not consider or guarantee any foreign credits, it could not be said that Petitioner either commenced or continued his studies in part because of a promise from the University. Under the circumstances however, Petitioner in fact did rely to his detriment upon the University's assertions about his transfer

credits. He applied to the University because he understood that the University recognized transfer credits. Prior to Petitioner's enrollment, he was told by Dr. Mailick that the University would recognize his 40 credits and that those credits together with the thirty-six he intended to take at the University would enable him to obtain his doctorate within not more than two-and-a-half to three years. In a personal interview with Mrs. Fisher, the University's Foreign Credentials Evaluator, Petitioner was told that she was recommending that Admission be offered at the level of a Master's Degree and that transfer credits would be recognized after enrollment and within the first six months of his matriculation. Mrs. Fisher was the person appointed by the University to evaluate Petitioner's transcripts. Dean Norton subsequently assured Petitioner in two

officially signed letters that 40 transfer credits were recognized. Then, two-and-one-half years after he began his studies at the University, Petitioner was informed that no transfer credits would be allowed. This meant that Petitioner would be forced to accrue another thirty-six credits with additional studies at the University were he to obtain his doctorate. The University was in fact requiring him to spend more time effort and money.

It must be emphasized that Petitioner was 55 years old and employed by the United Nations in a senior post at the time he decided to enroll as a Ph.D candidate.

Petitioner's professional post at the U N was one of substantial responsibility and his permanent United Nations contract did not make the holding of Ph.D. degree indispensable for his immediate livelihood.

Yet, such an advanced degree would be necessary for him to pursue a career of writing, teaching and lecturing when, upon his mandatory retirement from the United Nations, at age 60, he would suffer a drastic reduction of earnings.

While he was still employed at U N Headquarters, he could afford to decide how much time, effort and money he was willing to spend on his doctoral studies as well as how much he was willing to disrupt his family life. At his age and in view of the finite time available to him before being retired from the United Nations, the grant of foreign credits was of paramount importance to Petitioner and the crucial element in his decision to obtain a Ph.D. Had Petitioner known at the outset he could not obtain 40 or any transfer credits, he might have decided

not to engage in such a laborious and long course of study. A younger, less well-established student might well have had no choice but to pursue a doctorate, no matter how long the course of study lasted. New York University was aware of Petitioner's situation when he applied to the University and was reminded of it the numerous times he raised the subject of his transfer credits thereafter.

Petitioner relied to his detriment upon the University's promises, that within the first six months of his attendance, he would receive 40 transfer credits. To this day the University has given no plausible reason, indeed it has given no reason at all, why Petitioner's credits could not be transferred. The University therefore induced Petitioner to enter and remain in a course of study by

using false pretenses: the University never apprised Petitioner of the fact that the promises to grant or deny foreign credits were based entirely on whim. The least that Petitioner relied upon was the University's good faith. The most that he relied upon were the University's promises. Petitioner was entitled to both good faith and to kept promises. To hold that Petitioner in this case did not rely to his detriment on the University's actions and promises is to accept a miscarriage of justice. Petitioner respectfully requests that this Court redress the error.

New York University violated the due process right of Petitioner when it promised him transfer credits without providing the standards or qualified personnel to effectuate evaluations of foreign transfer credits. The

University's promise mislead Petitioner and caused him to rely to his detriment upon the University's assertions. For these reasons the judgment of the court below must be reversed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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JUDGMENT AND DECISION OF
SUPREME COURT OF NEW YORK COUNTY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

A. JUAN JORGE MORALES, Plaintiff, -against- NEW YORK UNIVERSITY, PERRY L. NORTON and DICK NETZER, Defendants.	Index No. 04189/79 Cal. No. E-19793 JUDGMENT

The issues in the above entitled action have been brought on regularly for trial before Mr. Justice DeForest C. Pitt at a Trial Term, Part 76 of this Court, held in and for the County of New York, State of New York on the 10th day of February, 1982, and the parties herein having been duly tried and Mr. Justice Pitt having duly made a written memorandum decision dated the 30th day of April, 1982, and so ordered on the 10th day of June, 1982, relating to the facts found and directing judgment to be entered thereon as hereinafter stated:

NOW, on motion of S. Andrew Schaffer, attorney for defendants, it is

ADJUDGED that the complaint as against defendants New York University, Perry L. Norton and Dick Netzer is dismissed, and it is further

ADJUDGED that the defendants New York University, Perry L. Norton and Dick Netzer recover costs and disbursements of this action in the sum of $_____ to be taxed by the Clerk, including special disbursements in the sum of $1,486.00 for trial transcript, against the plaintiff and that the defendants have execution therefor.

JUDGMENT SIGNED THIS 22ND DAY OF JULY, * 1982, at ALBANY, NEW YORK (*by E. S. Conway in the absence of Justice Pitt due to illness).

_____
DeForest C. Pitt
Justice of Supreme Court

Plaintiff: A. Juan Jorge Morales
200 East End Avenue
New York, New York 10028

Defendants: New York University
70 Washington Square South
New York, New York 10012

Perry L. Norton
223 Leonia Avenue
Leonia, New Jersey

Dick Netzer
227 Clinton Street
Brooklyn, New York

STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK
* * * * * * * * * * * * * * * * * * * *
A. JUAN JORGE MORALES,
Plaintiff,

-against-

NEW YORK UNIVERSITY, PERRY L. NORTON AND DICK NETZER,
Defendants.
* * * * * * * * * * * * * * * * * * * *
(SUPREME COURT, COUNTY OF NEW YORK, TRIAL TERM, FEBRUARY 1982).
(HON. DE FOREST C. PITT, PRESIDING)

APPEARANCES: KUNSTLER AND MASON, ESQS.
ATTORNEYS FOR PLAINTIFF.
(WILLIAM M. KUNSTLER, ESQ. OF COUNSEL.)

S. ANDREW SCHAFFER, ESQ.
ATTORNEY FOR DEFENDANTS.
(ADA MELOY, ESQ., & ROBERT P. WALTON, ESQ., OF COUNSEL.)

M E M O R A N D U M

PITT, J.

The plaintiff, A. Juan Jorge Morales, was a candidate for a degree of doctor of philosophy in the Graduate School of Public Administration, a division of the Graduate School of Arts and Science of the defendant New York University. At the time of his admission to the university and during the course of his

studies for his doctoral degree he was informed by the admission clerk and his faculty advisor, defendant Perry L. Norton, Assistant Dean of the Graduate School of Public Administration, that he would be recommended to receive 40 transfer credits based upon his education in Argentina at Colegio Militar de la Nacion and at Escuela Superior de Guerra. The plaintiff received commissions as Lieutenant and General Staff Officer from these schools. Plaintiff was also informed by Professor Mitchell of the Graduate School of Arts and Science that he should be recommended for 40 transfer credits based upon his military school education and upon his job training at the United Nations where he was employed as a career diplomat if he used Latin American Studies as a doctoral field.

When defendant Norton's recommendation that the plaintiff receive 40 credits was

received at the registrar's office, defendant Netzer, Dean of the Graduate School of Arts and Science, requested that the plaintiff's credit recommendation be reviewed and examined by the registrar's office. Upon review by the new transfer credit clerk the plaintiff was denied all transfer credits.

Upon receiving notification of the denial of the transfer credits, the plaintiff completed his semester with a grade of "A" in each course. He then requested and was granted a leave of absence with a waiver of all fees with the resultant denial of future use of the university library and other university facilities.

Thereafter, the plaintiff commenced this action against New York University, Perry L. Norton and Dick Netzer. The complaint alleges four causes of action for breach of an implied contract, estoppel, malice and malicious inducement to breach an implied contract.

Upon a motion for summary judgment brought by the defendant university, the Appellate Division, First Department, found an issue of fact as to whether the defendant university exercised its discretion in denying transfer credits arbitrarily and irrationally or in good faith.

Upon the trial of this action the plaintiff failed to introduce any direct evidence with respect to the subject matter and qualitative nature of his military education. Plaintiff did not describe the courses he took or provide any programs or catalogs with descriptions of his educational background. As such, the plaintiff failed to show that his educational background at the Argentinian military schools included courses that were substantially equivalent to courses given at defendant New York University and that qualified for credit in his field of study. The plaintiff has therefore failed to show that denial of the transfer credits was in any way

arbitrary or capricious. Absent such a showing it cannot be determined that defendant New York University breached its implied contract with the plaintiff or failed to deal in good faith and with fairness with the plaintiff.

The plaintiff testified that he relied upon statements of employees of New York University, the admission clerk, defendant Norton and Professor Mitchell in believing that he would receive 40 credits to be applied toward his doctoral degree. However, the plaintiff did not testify that he would have purused his degree at a different univeristy, or would have acted in a different manner if he were not told that he would be recommended for transfer credits. The plaintiff has therefore failed to show any detrimental reliance upon the statements that he would be recommended for 40 transfer credits. As such, an essential element of estoppel is missing. Furthermore, absent a showing that the

University's actions were arbitrary and capricious or that the determination was based upon procedural rules rather than academic criteria, this court may not substitute its judgment for the judgment of the university, Olsson v. Board of Higher Education, 49 N.Y. 2d 408).

The plaintiff has proved that he did not get along well with his faculty advisor, defendant Norton. However, he has failed to prove that such lack of rapport was the cause of the denial of his transfer credits. Since the plaintiff has failed to show that such denial was arbitrary and capricious, he has failed to show that the denial was done in bad faith or for any motive other than upholding academic standards. Furthermore, the testimony of Nancy Eder, who reviewed the request for transfer credit, was that she did not discuss the file with anyone, including the individual defendants. Her determination to

deny the credits was in no way influenced by the alleged malice. The plaintiff has thus failed to prove the existence of any malice in fact or in law.

Even if plaintiff has proved liability on the part of the defendants, the plaintiff has failed to prove any damages. The plaintiff would not be entitled to reimbursement of tuition or return of payments for books and supplies purchased since the plaintiff received the benefit of the tuition and in fact received 36 credits toward his doctoral degree. Since there was no malice, the plaintiff is not entitled to receive attorneys fees in this action. Furthermore, the plaintiff's proof of damages for failing to receive a degree of Doctor of Philosophy was totally speculative. The proof of psychological injury, a state of depression not requiring any treatment and not affecting the plaintiff's employment, shows that the causes were the plaintiff's impending retirement, his

approaching the age of his father at the time of his death and the delays involved in this litigation. There has been no showing of a casual relationship between the actions of the university and the plaintiff's alleged physical condition which arose approximately two years after the denial of transfer credit.

The plaintiff has failed to prove any liability on the part of the defendants, New York University, Perry L. Norton and Dick Nezer and has failed to prove that he is entitled to any damages in this action. The determination of this non-jury trial court is that the plaintiff has no cause of action against the defendants.

All pending motions contrary to this decision are denied.

Submit judgment.
Dated: Troy, N.Y.
April 30th, 1982.

(All papers are herewith forwarded to the Attorneys for the Defendants.)

So Ordered_____

J.S.C.

DATED: June 10, 1982.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on December 9, 1982.

Present: Hon. Francis T. Murphy, Jr.,
David Ross
Samuel J. Silverman
Bentley Kassal, Justices.

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A. Juan Jorge Morales,

Plaintiff-Appellant,

-against- : 15187

New York University, Perry L. Norton, and Dick Netzer,

Defendants-Respondents.

- - - - - - - - - - - - - - - - - - - X

An appeal having been taken to this Court by the above named appellant from a judgement of the Supreme Court, New York County (Conway, J.), entered on July 23, 1982, which dismissed plaintiff's complaint and granted defendants special disbursements for the trial transcript in the sum of $1,486.00,

And the said appeal having been argued by Paula Schwartz Frome of counsel for appellant, and by Ada Meloy of counsel for respondents, and due deliberation having been had thereon,

It is unanimously ordered that the judgment so appealed from be and the same hereby is affirmed, without costs and without disbursements.

ENTER:

_____

Clerk

A. Juan Jorge Morales,
Appellant,

vs.

New York University, Perry L. Norton and Dick Netzer,
Respondents.

Motion for leave to appeal denied with twenty dollars costs and necessary reproduction disbursements.

Decision of Court of Appeals Feb. 23, 1983.

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